

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

Douglas W. Domenech
Secretary of Natural Resources

13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

David K. Paylor
Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**K. HOVNANIAN FOUR SEASONS AT HISTORIC VIRGINIA, LLC
FOR
FOUR SEASONS AT HISTORIC VIRGINIA
VWP Permit No. 00-0236**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and K. Hovnanian Four Seasons at Historic Virginia, LLC, regarding the Four Seasons at Historic Virginia property, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the

contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

5. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
6. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
8. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
9. "K. Hovnanian" means K. Hovnanian Four Seasons at Historic Virginia, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. K. Hovnanian Four Seasons at Historic Virginia, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such

alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Property" or "Parcel" means the tract of land west of I-95, south of Powells Creek, and North and East of Route 234 in Prince William County, Virginia, previously owned by K. Hovnanian.
16. "NRO" means the Northern office of DEQ, located in Woodbridge, Virginia.
17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Property was developed as a residential community. K. Hovnanian was issued VWP Individual Permit Number 00-0236 on July 9, 2001, for impacts to surface waters associated with this development.

2. On April 23, 2009, DEQ inspectors conducted a site inspection of the Property for compliance with the requirements of the State Water Control Law and the Regulations. Based upon the site inspection, DEQ observed unauthorized impacts to surface waters totaling approximately 1.75 acres
3. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit discharge of fill material into surface waters without a Permit issued by the Director. K. Hovnanian does not have a Permit for the above activities
4. On July 13, 2009, DEQ issued a NOV to K. Hovnanian for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
5. On June 25, 2010, K. Hovnanian submitted additional documentation regarding the final impacts, permitted and unauthorized, from the development of the Property. The additional information confirmed that unauthorized impacts, in the form of a discharge of fill material, had been taken in the amount of 1,995 linear feet of stream and 0.73 acre of palustrine forested wetlands, each of which are surface waters.
6. Based on the results of April 23, 2009, inspection, and the documentation submitted on June 25, 2010, the Board concludes that K. Hovnanian has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraphs C(2) above.
7. In order for K. Hovnanian to complete its return to compliance, DEQ staff and representatives of K. Hovnanian have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders K. Hovnanian, and K. Hovnanian agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$60,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

K. Hovnanian shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the

requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of K. Hovnanian for good cause shown by K. Hovnanian, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, K. Hovnanian admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. K. Hovnanian consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. K. Hovnanian declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by K. Hovnanian to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. K. Hovnanian shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. K. Hovnanian shall show that such circumstances were beyond its control and not due to a lack of good faith or

diligence on its part. K. Hovnanian shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the K. Hovnanian intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and K. Hovnanian. Nevertheless, K. Hovnanian agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. K. Hovnanian petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to K. Hovnanian.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve K. Hovnanian from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by K. Hovnanian and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of K. Hovnanian certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind K. Hovnanian to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of K. Hovnanian.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, K. Hovnanian voluntarily agrees to the issuance of this Order.

And it is so ORDERED this nd 22 day of September, 2011.


Thomas A. Faha, Regional Director
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

K. Hovnanian at Historic Virginia, LLC voluntarily agrees to the issuance of this Order.

Date: 7/27/11 By: Gary Chandler, Vice President
(Person) (Title)

K. Hovnanian Four Seasons at Historic Virginia,
LLC

Commonwealth of Virginia

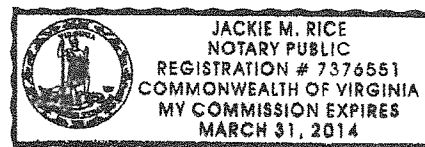
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 27 day of
July, 2011, by Gary Chandler who is
Vice President of K. Hovnanian Four Seasons at Historic Virginia, LLC, on
behalf of the company.

Jackie M. Rice
Notary Public
7376551
Registration No.

My commission expires: 3/31/2014

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

K. Hovnanian Shall:

1. Within 30 days of the execution of this Order, submit to DEQ proof of purchase of stream compensation credits or stream condition units from a DEQ approved stream bank which is authorized under a DEQ approved mitigation banking agreement to sell credits to this project sufficient to fulfill the compensation burden of 1,995 lf stream compensation requirements.
2. Within 30 days of the execution of this Order, submit to DEQ proof of purchase of 1.46 wetland credits from the Buena Vista Bank to compensate for impacts to 0.73 of palustrine forested wetlands.
3. In the event that K. Hovnanian is unable to obtain necessary approvals to fulfill the compensation requirements through the purchase of credits and/or units as described in paragraph (1) and (2) above, K. Hovnanian shall submit no later than 60 days from the execution of this Order, an approvable Corrective Action Plan (CAP) detailing how it will provide compensation for state waters on the Property that have been impacted without a Permit that meets the requirements of 9 VAC 25-210-116. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. K. Hovnanian shall respond to any DEQ notice of deficiency regarding the CAP within 14 calendar days.
 - a. Upon approval of the CAP, K. Hovnanian shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. K. Hovnanian shall complete the CAP in accordance with its terms.
 - i. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then K. Hovnanian shall so advise DEQ in the applicable monitoring report for the monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, K. Hovnanian shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ approved alternative CAP shall then be implemented by K. Hovnanian in accordance with the schedule set forth in the alternative CAP.
 - ii. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then K. Hovnanian shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as

applicable, any previously submitted alternate CAP. K. Hovnanian shall respond to any DEQ notice of deficiency in the proposal in accordance with the terms of the notice. K. Hovnanian shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

4. Unless otherwise specified in this Order, submit all requirements of Appendix A of this Order to:

Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193